
**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION**

Richard Brewer, et al.,
Plaintiffs,

v.

Ron Nirenberg, et al.,
Defendants.

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Civil Action No. 5:17-CV-00837-DAE

**PLAINTIFFS' SUPPLEMENTAL MOTION TO COMPEL
ENTRY ON LAND AND INSPECTION
OF MONUMENT, CANNON, AND TIME CAPSULE**

1. Plaintiffs supplement their motion to compel entry on land and inspection of monument, cannon, and time capsule.

2. The supplemental procedural history for this motion is that:

a. Defendants submitted their discovery to plaintiffs on May 10, 2018, after defendants' twenty-four day delay that defendants and plaintiffs agreed as professional courtesy,

b. Plaintiffs discovered that defendants had seriously damaged the Travis Park Monument, contrary to the Court's admonition to remove the Monument "intact" and defendant's five-fold agreement to remove the Monument "intact" (ECF No. 13 at 21-

23). "THE COURT: Intact is the proper term. MS KLEIN:

Intact, keep it in storage.” (ECF No. 13 at 22-23). Intact means “(1) untouched, especially by anything that harms or diminishes, (2) having no relevant component removed or destroyed, *as of a living body or its parts.*” *Merriam-Webster Online*. Defendants had broken the rifle above the hand, held by the Private Snuffy figure at the top of the Monument; defendants split a granite foundation stone in two; defendants have sheared off an entire corner of an engraved stone. EXHIBIT A.

- c. Defendants deny having damaged the Monument, contrary to the photographic evidence. (ECF No. 36 at 3).
 - d. Plaintiffs sent copies of the photographic evidence of damage to Steve Tatti, principal and chief conservator of Tatti Art Conservation in New York, New York. Mr. Tatti has conserved the Statue of Liberty in New York Harbor and works of public art of international significance. Mr. Tatti can complete a Condition Report of the Monument to determine the extent of damage and the means necessary to repair it. EXHIBIT B.
3. Plaintiffs agree to:
- a. Inspect the Monument under a standard protective order of the Western District of Texas, barring plaintiffs from disclosing the location of the monument;

- b. Inspect with expert (or professional designee), counsel and SCV officers Dr. William Boyd and Mr. John McCammon only;
- c. Inspect without the participation or immediate supervision of any other persons and only with the participation of attendees identified in ¶ 3(b) immediately above, to avoid a breach of attorney-client privilege; save that law enforcement may secure ingress and egress to the storage compartment.
- d. Inspect by non-destructive testing;
- e. Disclose all photographs, videotapes, or other recordings created during the inspection to defendants; and,
- f. Confirm the identity of inspection attendees at least seven days before inspection.

4. On May 31, 2018, plaintiffs' attorneys conferred with Deborah Klein, attorney for defendants on this motion.

5. This motion to supplement and the relief sought here is incorporated by reference for all purposes into Plaintiffs' Motion to Compel Entry on Land and Inspection of Monument, Cannon, and Time Capsule.

For these reasons, plaintiffs ask that the Court GRANT this Motion to Supplement and after ruling on the merits of the original Motion & the Supplement, to do the following:

- a. GRANT Plaintiffs' Motion to Compel Entry on Land and Inspection of Monument, Cannon, and Time Capsule according to the above-cited directions under Paragraph No. 3, supra;
- b. ORDER inspection to be held within thirty days subsequent to the Court's order;
- c. GRANT plaintiffs their reasonable attorney's fees as described in their affidavits;
- d. ORDER defendants to pay for the Mr. Tatti's Condition Report, and,
- e. Grant any other relief the Court deems appropriate.

Respectfully submitted this 1st day of June 2018.

/s KIRK DAVID LYONS
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CERTIFICATE OF SERVICE

I certify that on June 1, 2018, a copy of Plaintiffs' Supplemental Motion to Compel Entry on Land and Inspection of Monument, Cannon, and Time Capsule was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on defendants and their counsel.

/s/ KIRK DAVID LYONS

CERTIFICATE OF CONFERENCE

On May 31, 2018 by phone, and JUN 1, 2018 by email (no response by 5PM CDT) I conferred with Deborah Klein, attorney for defendants, and she did not state that she was opposed to filing of Plaintiffs' Motion to Supplement, but I assume that she is opposed to granting of the other relief requested.

/s/ KIRK DAVID LYONS
Attorney for Plaintiffs